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No. 88-2035

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

ADAMS FRUIT COMPANY, INC., a Florida Corporation,
Petitioner,

v.

RAMSFORD BARRETT *et al.*,
Respondents.

On a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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Brief of Congressman William D. Ford and the Washington Lawyers' Committee for Civil Rights Under Law as *Amici Curiae in Support of Respondents*

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INTEREST OF THE AMICI CURIAE

Congressman William D. Ford is the ranking member of the Committee on Education and Labor of the United States House of Representatives. He chaired the House Subcommittee on Agricultural Labor from 1973-1977. He was the author and floor manager of the 1974 Amendments to the Farm Labor Contractor Registration Act ("FLCRA") which created a private right of action for farm workers. In 1983, he co-sponsored the bill which became the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA") and was one of the key House members who secured the enactment of the bill. He has a keen interest in the proper interpretation and enforcement of the remedial provisions of AWPA.

In addition to his work on FLCRA and AWPA, Congressman Ford has been active in shaping every other piece of labor legislation affecting migrant and seasonal agricultural workers since 1973, including amendments to the Fair Labor Standards Act, the Immigration Reform and Control Act and the Job Training Partnership Act.

Congressman Ford has particularly worked to secure proper education of the children of migrant farm workers. Since 1978, he has served as Chairman of the Interstate Migrant Education Council and is a member of the National Commission on Migrant Education. Congressman Ford was instrumental in the establishment of the Office of Migrant Education in the United States Department of Education.

The Washington Lawyers' Committee for Civil Rights Under Law was established in 1968 by a group of law firms in response to the racial disturbances that had erupted in Washington, D.C. and many other cities. Its goal then, as today, is to provide high quality *pro bono* legal services to victims of discrimination and poverty in the Washington community. Over the years, the Committee has participated in more than 2,000 cases of civil rights

advocacy on the basis of contributed services of the private bar.

The defense of farm worker rights has been an important program for the Committee. The Committee has frequently mobilized legal resources to aid farm workers working in the fields of Maryland, Virginia, and West Virginia. The preservation of farm workers' rights to bring private actions to secure the protection of AWPA is a cause to which the Committee is committed.

STATEMENT OF THE CASE

Plaintiffs are migrant and seasonal farm workers under the Migrant and Seasonal Agricultural Worker Protection Act, Pub. L. No. 97-470, 96 Stat. 2584 (1983) (codified at 29 U.S.C. §§ 1801-1872) ("AWPA"). They have sought relief under the private remedy provisions of Section 1854 for injuries caused by defendant's intentional violations of the Act.

Defendant employed plaintiffs to harvest oranges in central Florida in early 1985. (J.A. 4) On the morning of May 8, defendant was transporting plaintiffs and nine other workers to defendant's worksite in a van owned by defendant. (J.A. 5) Contrary to the provisions of AWPA concerning vehicle safety and the regulations promulgated under AWPA to protect migrant and seasonal farm workers from injury, defendant did not provide seat belts, did not provide each worker with a seat, loaded nineteen persons on board even though the van had a maximum capacity of but twelve, and failed to secure cargo appropriately. (J.A. 5-8) During the trip, a tire blew out; the overloaded van ran off the highway and overturned. (J.A. 6) Plaintiffs suffered serious permanent physical injuries. *Id.*

Plaintiffs received limited workers' compensation benefits under the Florida workers' compensation law for their

diminished capacity to work, in accordance with the schedules contained in the law. (J.A. 11-12) Plaintiffs thereafter filed suit under AWPA in the United States District Court for the Middle District of Florida to recover their actual damages. The court granted defendant partial summary judgment with respect to the plaintiffs' claims for damages caused by defendant's intentional violations of the motor vehicle safety provisions of AWPA. (J.A. 20) The court (Kovachevich, J.) ruled that the workers' compensation benefits provided pursuant to the Florida law constituted, by reason of the state exclusivity provision in the state statute, the exclusive remedy for plaintiffs' injuries. *Barrett* v. *Adams Fruit Company, Inc.*, No. 86-1301-Civ.-T-17 (M.D. Fla. Oct. 29, 1987).

After settlement of certain other causes of action alleged by plaintiffs under AWPA, the court entered judgment for defendant and plaintiffs appealed the summary judgment order. The Court of Appeals for the Eleventh Circuit reversed. *Barrett* v. *Adams Fruit Company, Inc.*, 867 F.2d 1305 (11th Cir. 1989). After reviewing the legislative history of AWPA, the court held that the private remedy provided by AWPA for actual damages resulting from intentional violations of that Act, 29 U.S.C. § 1854, preempted the exclusive remedy provisions of the Florida law. 867 F.2d at 1310.

SUMMARY OF ARGUMENT

In enacting AWPA, Congress determined that the best means for effectively protecting migrant and seasonal farm workers from a catalogue of shocking abuses and for enforcing AWPA lay in empowering farm workers on their own behalf to obtain damage and injunctive remedies from the federal courts. Congress did not intend to subordinate these AWPA remedies to the limited workers' compensation benefits available to some injured farm workers under the laws of some of the states. Congress' references in AWPA to workers' compensation insurance merely de-

scribe a means for coordinating benefits between types of insurance required by the Act for the protection of farm workers.

This Court has ruled that exclusive remedy provisions of state workers' compensation statutes are limited in effect only to bar supplemental remedies under the laws of the state of enactment and do not bar awards of supplemental benefits to injured workers under the laws of other jurisdictions, either under the laws of other states, or as in the instant case, under laws of the United States. *Thomas* v. *Washington Gas Light Co.*, 448 U.S. 261, 286 (1980). The Florida Supreme Court has construed the Florida workers' compensation statute in consonance with that ruling. *See Byrd* v. *Richardson-Greenshields Securities, Inc.*, 14 Fla. L. Weekly 549 (Fla. Sup. Ct. Oct. 26, 1989); *DeCancino* v. *Eastern Air Lines*, 239 So. 2d, 15, 17 (Fla. 1970). Thus, the exclusive remedy provision of the Florida law does not apply in the instant case.

If this Court should determine that the exclusive remedy provision of the Florida law applies herein, then that provision stands as an obstacle to the accomplishment of the full purposes of Congress in AWPA and the Court should "pre-empt the state compensation exclusivity clause." *Sun Ship, Inc.*, v. *Pennsylvania*, 447 U.S. 715, 724 n.6 (1980).

ARGUMENT

I. CONGRESS INTENDED TO REMEDY THE HISTORIC EXPLOITATION OF FARM WORKERS BY PROVIDING THEM IN AWPA WITH AN EFFECTIVE PRIVATE RIGHT TO FEDERAL JUDICIAL RELIEF

A. Congress' Purpose in AWPA Was To Prevent the Continued Exploitation of Farm Workers by Giving Them a Private Right To Obtain Federal Court Remedies for Violations of the Act

In the early 1960s, concerned about the shameful exploitation of migrant and seasonal farm workers, Congress

undertook a comprehensive investigation of agricultural employment practices. The focus of this investigation was the mistreatment of farm workers by farm labor contractors or "crew leaders," who served as liaisons between the employers and the farm workers. The crew leaders organized groups of farm workers, contacted the employers, transported the farm workers to the farms, supervised them while they worked, and paid their wages. Thus, the crew leader was "the individual who ha[d] the most continuing relationship with . . . migrant workers." S. Rep. No. 202, 88th Cong., 2d Sess. 2 (1963).

Department of Labor surveys, conducted in 1960 and 1962, catalogued a variety of crew leader abuses of the farm workers: crew leaders wrongfully pocketed transportation money advanced by employers and deducted from workers' earnings; they failed to return workers to their homes; they misrepresented the nature of jobs for which workers were hired; they grossly overstated the wages that farm workers would earn; and they unjustly misappropriated the workers' meager salaries by "collecting wages from employers but abandoning workers without payment" and "overcharging for groceries or meals." *Id.* at 5.

Congress responded in 1963 by enacting the Farm Labor Contractor Registration Act, Pub. L. No. 88-582, 78 Stat. 920 (1963) ("FLCRA"). This statute focused on the role of crew leaders and required crew leaders to register with the Secretary of Labor. § 4. To obtain registration, the crew leaders had to: (1) attest that they would abide by standards of conduct prescribed in the Act; (2) file proof that they had secured insurance for personal injury and property damage liability arising out of the transportation of migrant workers; and (3) file sets of their fingerprints. § 5. FLCRA also required crew leaders to disclose truthfully to workers the location and nature of the crops to be harvested, the transportation, housing, insurance, and

wages that would be provided, and the charges crew leaders would deduct for their services. § 6(b).

Only the Secretary of Labor could enforce the crew leader registration mechanism. FLCRA gave farm workers no private remedies.

In the early 1970s, testimony presented to Congress evidenced that the Department of Labor was not enforcing FLCRA for the protection of migrant farm workers. Representative William D. Ford, Chairman of the Subcommittee on Agricultural Labor of the House of Representatives, informed the House that, despite FLCRA, crew leaders were continuing to "exploit their crews." Crew leaders were: "transport[ing] them in unsafe vehicles," "fail[ing] to furnish the contemplated housing," "exploit[ing] the worker in the sale of food," "withhold[ing] for their own profit part of the promised wage," and "traffick[ing] in marijuana, bootleg whiskey or prostitution." 119 Cong. Rec. H3447 (daily ed. May 8, 1973).

The House Committee on Education and Labor heard "complaints from migrants who alleged that they were being cheated out of their wages, overcharged for the food furnished, and physically assaulted." In addition, the Committee was overcome with examples of "misleading recruitment practices." Indeed, one crew leader acknowledged that "he was unaware of any contractor who did *not* give false or misleading information to migrants in recruiting." H.R. Rep. No. 1024, 93d Cong., 2d Sess. 5 (1974) (emphasis in original).

The Senate was advised that vehicles carrying farm workers were "mechanically unsafe" and "overcrowded;" that there were "several instances [of] conditions that fit the legal definition of slavery involving east coast crew leaders;" that migrant farm workers' income "remains at the bottom of America's pecking order of labor;" and that migrant farm workers "*have the most limited legal protections of any American worker.*" 120 Cong. Rec. S5467

(daily ed. Apr. 9, 1974) (statement of Senator Edward Kennedy) (emphasis supplied).

There was widespread congressional agreement that "many of the abuses which were the subject of the 1963 legislation ha[d] continued unabated." H.R. Rep. No. 1024 at 5. "Noncompliance by those whose activities the Act were intended to regulate ha[d] become the rule rather than the exception." S. Rep. No. 1206, 93d Cong., 2d Sess. 3 (1974).

Congress repeatedly observed that Department of Labor enforcement of FLCRA had been ineffective, in part because of "the Department's shortage of adequate manpower to police the Act." H.R. Rep. No. 1024 at 6. "The field staff of the Labor Department's Farm Labor Contract Registration Section was limited in 1968 to five professional employees." 119 Cong. Rec. H3447 (daily ed. May 8, 1973) (statement of Representative Ford). This grossly understaffed agency could not implement FLCRA's farm worker protections. The Department's most severe sanction commonly was "writ[ing] letters to all law violators." 120 Cong. Rec. S5467 (daily ed. Apr. 9, 1974). Most crew leaders remained unregistered. 119 Cong. Rec. H3447. The Secretary of Labor had completed only a handful of investigations. *Id.* By 1974 "only four persons ha[d] been referred to the Department of Justice for prosecution; and only one person ha[d] ever been convicted and sentenced." S. Rep. No. 1295, 93d Cong., 2d Sess. 3 (1974).

This testimony established for Congress the critical need for a "private remedy for aggrieved workers." *Id.*

Accordingly, Congress determined that the farm workers themselves had to be empowered with access to federal courts in order to enforce the Act. Congress desired a mechanism that was "self-enforcing" and "patterned after other Federal statutes in the field of civil rights." *Farm Labor Contractor Registration Act Amendments of 1963: Hearings Before the Subcomm. on Agricultural Labor of*

House Comm. on Education and Labor, 93d Cong., 1st Sess. 112 (1973). The mechanism Congress chose was the creation of "an *unfettered federal civil remedy* for persons aggrieved by a contractor's violation of the Act." H.R. Rep. No. 1024 at 6 (emphasis supplied).

Congress determined that the private right of action, "crucial to the effective enforcement of existing law," *id.*, was to be "available regardless of the existence of any criminal or administrative sanctions provided for specific kinds of violations of [the] Act." H.R. Rep. No. 1493, 93d Cong., 2d Sess. 11 (1974). Congress praised the private civil action as "provid[ing] . . . a more realistic arsenal of remedies in order to deter and correct the widespread violations that now exist,"[1] and "[p]roviding an aggrieved farm worker with a Federal forum [that] will help secure the Federal protections to which he is entitled." 120 Cong. Rec. S18130 (daily ed. Oct. 3, 1974).

Congress thereupon enacted the comprehensive private action provision which authorized the award of unlimited damages for "intentional" violations "up to and including an amount equal to the amount of actual damages" or "$500 for each violation" as well as "other equitable relief." Farm Labor Contractor Registration Act Amendments of 1974, Pub. L. No. 93-518, 1974 U.S. Code Cong. & Admin. News 1899, 1905. So that the right might be truly effective, Congress even authorized the judicial appointment of counsel for aggrieved farm workers. *Id.*

The private remedy added to FLCRA helped to reduce the exploitation of migrant farm workers. Nevertheless, Congress continued to observe shocking abuses. Crew leaders continued their oppression. Moreover, FLCRA's narrow focus on crew leader misconduct was allowing other employers to exploit farm workers without penalty.

[1] S. Rep. No. 1206 at 3.

The federal court cases brought by farm workers evidenced the exploitation.[2] These cases especially described outrages in the transportation of farm workers. Crew leaders and other employers were transporting farm workers with less concern for their safety and dignity than farm animals. Families were crammed into trucks lacking minimal safety devices let alone ordinary comforts. *See AWPA Hearings* at 110, 123-24. In "appallingly unsafe" vehicles, "people had to sit on top of piled luggage and bundles." *Id.* at 110. Children had to stand for long journeys as defective floor boards allowed "fumes to come [into] the truck." *Id.* Tarpaulins pulled over the top of trucks allowed farm workers "very little air or ventilation." *Id.* Women and children suffered the absence of food, water, and restroom facilities. *Id.* Trucks, some even without headlights, repeatedly crashed or broke down. *Id.* at 124. Exhausted drivers were kept awake as they drove only by the farm workers' shouts of panic. *Id.*[3]

In direct response, Congress thoroughly revised FLCRA and enacted AWPA in its present form. AWPA reenacts provisions of FLCRA concerning crew leader registration, 29 U.S.C. §§ 1811-1815, vehicle insurance, 29 U.S.C. § 1841(b)(1)(C), the prohibition against misleading workers, 29 U.S.C. § 1821(f), the requirement of farmer compliance with working arrangements, 29 U.S.C. § 1822, the prohibition against employing illegal aliens, 29 U.S.C. § 1816, and the disclosure requirements, 29 U.S.C. § 1821(a)-(d). In addition, AWPA imposes the obligation to protect migrant farm workers on *every* employer, including both crew leaders and fixed-situs employers such as the defendant herein. *See* 29 U.S.C. §§ 1821-1844.

[2] *See Hearings on the Migrant and Seasonal Agricultural Worker Protection Act: Hearings on H.R. 7102 Before the Subcomm. on Labor Standards of the House Comm. on Education and Labor*, 97th Cong., 2d Sess. 87-106 (1982) (hereinafter "*AWPA Hearings*").

[3] Other abuses perpetrated by farm worker employers were catalogued for Congress. *See AWPA Hearings* at 61-62.

Of signal importance, Congress carefully reenacted the farm workers' private right of action in AWPA and empowered courts to increase statutory damage awards against recalcitrant employers. *See* 29 U.S.C. § 1854(c). The House Report on AWPA sets forth the intent of Congress "to encourage the resolution of differences without resort to litigation, but also to *insure full access to the Federal courts by injured private parties.*" H.R. Rep. No. 885, 97th Cong., 2d Sess. 21 (1982) (emphasis supplied).

Representative Ford, former Chairman of the House Agricultural Labor Subcommittee and a cosponsor of AWPA, advised the full House that an important objective of the legislation was to preserve and strengthen the farm workers' rights of direct access to federal court protection:

> It has long been apparent that neither volunteerism on the part of agribusiness nor the puny enforcement efforts of the Department of Labor can be expected to make a significant difference in the working conditions of farm workers. Like the FLCRA, the AWPA provides for a private right of action and holds out the prospect of large damage awards against agricultural employers who mistreat their workers. This, I am sure, *will prove to be the most important deterrent against the continued abuse of migrant and seasonal farm workers.*

128 Cong. Rec. H10456 (daily ed. Dec. 20, 1982) (emphasis supplied).

Senator Hatch, in presenting the AWPA bill to the Senate, made "specific comment" about the private right of action and stressed that "[t]here is no limit on the amount of actual damages that can be awarded by a court." 128 Cong. Rec. S15565 (daily ed. Dec. 18, 1982). The Senator "want[ed] to make absolutely clear . . . [that] *full actual damages would be awarded in every case.*" *Id.* (emphasis supplied).

The court below, reviewing the history of the legislation, correctly perceived that Congress intended the "private right of action for violations of the Act" to be "[c]entral to the Act's enforcement." *Barrett* v. *Adams Fruit Co., Inc.*, 867 F.2d 1305, 1309 (11th Cir. 1989).

B. Congress Did Not Intend To Subordinate the Remedies Available by Private Action Under AWPA to the Limited Benefits Sometimes Available Under Workers' Compensation Schemes of the States

Petitioner urges the subordination of the farm workers' private right of action for statutory remedies in the federal courts to a system of limited benefits provided by Florida's workers' compensation laws[4] based on a single reference in AWPA to workers' compensation insurance. The congressional references to workers' compensation insurance during the legislative debates, and the express wording of AWPA, permit no such result.

FLCRA initially demanded, among requirements for crew leader registration, "a policy of insurance which insures such applicant against liability for damages to persons or property arising out of the applicant's . . . operation of . . . any vehicle for the transportation of migrant workers . . . ." FLCRA § 5(a)(2). This provision was designed to assure, in an industry filled with fly-by-night operators, some source of recovery for migrant workers injured in transportation.

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[4] Unlike AWPA, which permits an injured farm worker to recover up to his or her "actual damages," including pain and suffering, the Florida workers' compensation law limits compensation to disabilities that result in loss of earning capacity. Accordingly, if a farm worker suffers a serious permanent injury that happens not to diminish his earning capacity, no recovery would be permitted under the Florida workers' compensation law even though the injured worker has no right to sue at common law for such injury. *See Grice* v. *Suwanee Lumber Manufacturing Co.*, 113 So. 2d 742 (Fla. Dist. Ct. App. 1959).

In 1978, Congressman Ireland introduced a bill to amend FLCRA that was apparently designed to reduce the cost of crew leaders' insurance and to limit exposure to liability by acknowledging at the federal level the exclusivity of state workers' compensation remedies. The bill provided that if an employer obtained "a policy of workmen's compensation insurance which insures the payment of workmen's compensation benefits under State law for personal injury or death to migrant workers by accident arising out of and in the course of their employment," then "the policy of vehicle liability insurance provided by him shall conform to the exclusive remedy provisions of the State workmen's compensation law." H.R. Rep. 10631(7), 95th Cong., 2d Sess., *reprinted in Farm Labor Contractor Registration Act: Hearings on H.R. 8232 and Other Bills Before the Subcomm. on Economic Opportunity of the Comm. on Education and Labor*, 95th Cong., 2d Sess. 4 (1978). Representative Ireland expressed concern about "the risk that the courts might conceivably allow 'double dipping' by agricultural workers." *Id.* at 34. Farm employer witnesses who favored the Ireland bill feared "that FLCRA preempted the exclusive remedy provision of State workmen's compensation law and allow[ed] double dipping, double recovery." *Id.* at 107.

Congress rejected the Ireland bill, evidencing an intention that the program of private farm worker federal remedies—then just recently enacted—should not be subordinated to the limited regime of state workers' compensation benefits.

In 1983, when Congress expanded the coverage of the Act so as to afford farm workers private federal remedies against a larger group of agricultural employers, Congress also authorized a set of practical insurance alternatives for one set of risks. Thus, Congress reenacted as 29 U.S.C. § 1841(b)(1)(C) the vehicle insurance requirement of FLCRA. Additionally, Congress provided for the coordi-

nation of benefits of vehicle insurance with policies of workers' compensation insurance:

> If an agricultural employer . . . provides workers' compensation coverage for such [agricultural] worker in the case of bodily injury or death as provided by such State law, the following adjustments in the requirements of subsection (b)(1)(C) of this section relating to having an insurance policy or liability bond apply:
>
> (1) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State law.
>
> (2) An insurance policy or liability bond shall be required of the employer for circumstances under which coverage for the transportation of such workers is not provided under such State law.

29 U.S.C. § 1841(c).

That provision is clearly limited to coordinating coverage between two kinds of insurance covering to some degree the same risks. That provision evidences no intent by Congress that insurance coverage under state workers' compensation schemes should deprive injured farm workers of the right to bring private damage actions in federal courts. By the terms of the Act, the provision of workers' compensation insurance only relieves the employer from the obligation of otherwise following "the [vehicle insurance] requirements of *subsection (b)(1)(C) of this section* [*1841*]." *Id.* (emphasis supplied). This insurance provision makes absolutely no reference to the comprehensive scheme of private remedies described in *Section 1854*.

The Department of Labor regulation purporting to interpret the vehicle insurance provision, 29 C.F.R.

§ 500.122(b),[5] is invalid. Even if the regulation merely acknowledged the applicability of *state* exclusive remedy provisions, as they may be interpreted broadly or narrowly by state courts, the regulation would be without legitimate basis. But the regulation goes further. It would require the federal courts to determine the primary applicability of state workers' compensation laws and would create a *federal* exclusive remedy defense for farm worker employers, without regard to the quality or scope of available state benefits. Neither the Congressional legislative record nor the language of AWPA as enacted support that regulation. Consequently, amici urge this Court to invalidate the regulation and preserve the farm worker remedies in full force as Congress intended them to be. As this Court noted in a related context, "[i]t would be a *tour de force* of statutory misinterpretation"[6] to treat an amendment to an act intended to benefit farm workers as a limitation on the rights of farm workers to seek federal court relief and to achieve the full protections of the Act.

C. In the Rare Instance When Congress Intends To Subordinate a Federal Benefits Program to State Workers' Compensation Laws, It Does So in Unmistakable Language Nowhere Found in AWPA

On rare occasions Congress has subordinated a federal program of relief for particular workers and injuries to state workers' compensation benefits for the same persons and injuries. But on those occasions Congress has spoken in unmistakable language. For example, in the War Hazard Compensation Act, 42 U.S.C. § 1701 *et seq.*, Congress, in providing for federal compensation to workers who sustained injuries as a result of "a war-risk hazard," also

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[5] "Where a State workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers' compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death." *Id.*

[6] *See Sun Ship, Inc.* v. *Pennsylvania*, 447 U.S. 715, 721 (1980).

authorized workers to choose instead state remedies. But Congress made the choice clear:

> No benefits shall be paid or furnished under the provisions of this subchapter for injury or death to any person who recovers or receives workmen's compensation benefits for the same injury or death under . . . the law of any State . . . .

42 U.S.C. § 1705.

Similarly, in the Black Lung Benefits Act, 30 U.S.C. § 901 *et seq.*, Congress integrated a federal scheme for compensating coal miners with state programs of workers' compensation by prescribing that in those states where the Secretary of Labor found "adequate compensation," 30 U.S.C. § 931(b), workers' claims for benefits "shall be filed pursuant to the applicable State workmen's compensation law . . . ." 30 U.S.C. § 931(a).

There are no such provisions in AWPA, because Congress intended no subordination of federal rights to limited state remedies.

D. State Workers' Compensation Benefits, Where They Are Available at All to Farm Workers, Fall Far Short of the Remedies Congress Intended To Provide in AWPA

While state workers' compensation systems are applauded for offering convenient payment mechanisms for injured industrial workers, these state systems present daunting perplexities to migrant farm workers. By definition, migrant farm workers go from state to state, and there is no uniformity among workers' compensation laws of the states. Some states offer some kinds of workers' compensation remedies to migrant farm workers, but several do not.[7] Some states offer workers' compensation rem-

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[7] *See* 4 A. Larson, *The Law of Workmen's Compensation* App. A (1989).

edies to *certain* farm workers, but not to farm workers employed by smaller farms or by farmers who employ no more than a specified number of workers for no more than a limited period of time,[8] or to farm workers engaged in other than a limited number of agricultural tasks.[9] Those states that provide some workers' compensation remedies to farm workers often question whether injuries sustained in transportation to and from the job site are compensable as "arising out of and in the course of" employment;[10] they also restrict payments to injuries from "accidents" and deny compensation for much intentional conduct which would clearly predicate actual and statutory damage recoveries under AWPA.

Thus, a rule that subordinated AWPA remedies to state workers' compensation laws, whenever some of those laws offered some benefits for some disabilities to some farm workers, would dramatically restrict the scope of the federal act and thrust farm workers into a maze of confusion. Only an outstanding cartographer could chart the proper boundary between AWPA and the various state workers' compensation laws. Lawyers and courts, both federal and state, would long contest the contours of that boundary in an unwelcome reprise of the decades of dispute over the availability of federal and state remedies to longshore-

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[8] *See, e.g.*, Fla. Stat. Ann. § 440.02(13)(c)(2) (West 1981). *See also* 4 A. Larson, *supra* note 7.

[9] *See* 4 A. Larson, *supra* note 7. For instance, the South Dakota workers' compensation statute covers only those farm workers engaged in the operation of "threshing machines, grain combines, corn shellers, cornhuskers, shredders, silage cutters, and seed hullers. . . . " S.D. Codified Laws Ann. § 62-3-16 (1989). The Wyoming workers' compensation statute covers only those farm workers engaged in "power farming." Wyo. Stat. § 27-14-103(d)(viii) (1989).

[10] *See* 1 A. Larson, *supra* note 7 at § 6.10 ("Few groups of statutory words in the history of law have had to bear the weight of such a mountain of interpretation as has been heaped upon this slender foundation").

men and harbor workers injured in maritime employment.[11] And all the while migrant farm workers would continue to serve in near peonage; their living conditions unimproved; their wages unsecured; their injuries unrequited.

The legislative record of AWPA shows that Congress sought to remedy the persistent abuses of farm workers by creating meaningful standards for their protection and by empowering farm workers with self-help legal remedies to enforce the law. The congressional record is entirely one of solicitude for migrant farm workers. Nothing in that legislative history supports a crippling construction of the federal Act whereby, through a kind of perverse and reverse preemption, the exclusive remedy provisions of state workers' compensation laws would blunt the effectiveness of the federal act.

AWPA represents a humane impulse by Congress. The court below respected that impulse. It construed the Act so as to preserve the opportunity of migrant farm workers to enforce their limited rights and to obtain at least a measure of relief from the federal courts. That decision correctly effectuated the intent of Congress and should be affirmed.

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[11] *See, e.g., Sun Ship, Inc.* v. *Pennsylvania*, *supra* note 6; *Nacirema* v. *Johnson*, 396 U.S. 212 (1969); *Calbeck* v. *Travelers Insurance Co.*, 370 U.S. 114 (1962); *Hahn* v. *Ross Island Sand & Gravel Co.*, 358 U.S. 272 (1959); *Avondale Marine Ways, Inc.* v. *Henderson*, 346 U.S. 366 (1953); *Davis* v. *Department of Labor and Industries*, 317 U.S. 249 (1942); *Washington* v. *W.C. Dawson & Co.*, 264 U.S. 219 (1924); *Grant Smith-Porter Ship Co.* v. *Rohde*, 257 U.S. 469 (1922); *Western Fuel Co.* v. *Garcia*, 257 U.S. 233 (1921); *Knickerbocker Ice Co.* v. *Stewart*, 253 U.S. 149 (1920); *Southern Pacific Co.* v. *Jensen*, 244 U.S. 205 (1917).

II. FLORIDA'S WORKERS' COMPENSATION EXCLUSIVITY PROVISION DOES NOT PURPORT TO BAR A PRIVATE ACTION BROUGHT UNDER AWPA

A. State Exclusivity Provisions Do Not Preclude Employees from Recovering from Other Jurisdictions

The courts consistently support supplemental recoveries under federal programs for worker injuries, notwithstanding exclusive remedy provisions in state workers' compensation laws which may also provide limited coverage for the same injuries. Only unmistakable language by Congress—not present in AWPA—can subordinate federal worker entitlements to state workers' compensation remedies.

Thus, Congress has enacted several statutes designed to protect various categories of workers from workplace injuries and to supplement relief that might be available to those workers under state workers' compensation laws. For example, Congress has enacted workers' relief statutes for longshoremen and harbor workers,[12] seamen[13], federal government employees,[14] railroad workers,[15] military base employees,[16] and handicapped persons.[17] When these workers are injured they often obtain state workers' compensation benefits for job related injuries and then seek additional benefits under one or another of the federal laws. In the federal proceedings, as in the instant case, employers commonly assert election of remedies defenses based on the exclusive remedy provisions of the states'

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[12] Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 *et seq.*

[13] Jones Act, 46 U.S.C. App. § 688.

[14] Federal Employees Compensation Act, 5 U.S.C. § 8101 *et seq.*

[15] Federal Employees Liability Act, 45 U.S.C. § 56 *et seq.*

[16] Defense Base Act, 42 U.S.C. §§ 1651-1654.

[17] Rehabilitation Act of 1973, 29 U.S.C. § 794.

workers' compensation statutes. Uniformly, the courts overrule these defenses, sustain the employees' rights to seek supplemental federal recoveries, and vindicate the congressional solicitude for employee welfare expressed in the various federal statutes.[18]

These decisions often speak in customary terms of federal preemption. But these decisions also reflect this Court's limiting construction of exclusive remedy provisions in state workers' compensation laws, consonant with the teaching that "a State has no legitimate interest" in preventing another jurisdiction "from granting supplemental compensation" to an injured worker. *Thomas* v. *Washington Gas Light Co.*, 448 U.S. 261, 256 (1980); *Industrial Comm. of Wisconsin* v. *McCartin*, 330 U.S. 622 (1947).

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[18] *See, e.g., Calbeck* v. *Travelers Insurance Co.*, 370 U.S. 114, 131 (1962) ("We hold that the acceptance of the [workers' compensation] payments does not constitute an election of the remedy under state law precluding recovery under the Longshoremen's Act."); *Thibodaux* v. *Atlantic Richfield Co.*, 580 F.2d 841, 847 (5th Cir. 1978) (exclusive remedy provisions of Louisiana workers' compensation remedy no bar to Jones Act suit because "an exclusive remedy provision in a state workmen's compensation law cannot be applied when it will conflict with maritime policy and undermine substantive rights afforded by federal maritime law"); *Roberts* v. *City of Plantation*, 558 F.2d 750, 751 (5th Cir. 1977) ("If plaintiff can prove himself entitled to Jones Act recovery, the exclusive remedy provision of Florida's workmen's compensation statutes cannot oust the federal court of its jurisdiction"); *Biggs* v. *Norfolk Dredging Co.*, 360 F.2d 360 (4th Cir. 1966) (Virginia workers' compensation recovery no bar to Jones Act suit); *Hutchings* v. *Erie City and County Library Board of Directors*, 516 F. Supp. 1265, 1273 (W.D. Pa. 1981) ("Pennsylvania's Workmen's Compensation Act does not, in any way, bar the plaintiff from pursuing these essentially federal claims"); *Rosa* v. *Cantrell*, 705 F.2d 1208 (10th Cir. 1982) (exclusivity provisions of Wyoming workmen's compensation law preempted by federal civil rights claim under 42 U.S.C. § 1988); *Rockport Yacht & Supply Co., Inc.* v. *Hollis*, 371 F. Supp. 1229 (S.D. Tex. 1973) (Texas workers' compensation recovery no bar to suit under federal longshoremen's compensation act); *Flying Tiger Lines, Inc.* v. *Landy*, 370 F.2d 46 (9th Cir. 1966) (California workers' compensation recovery no bar to suit under the federal Defense Base Act).

The development of this construction bears brief mention. In *McCartin*, 330 U.S. 622 (1947), an Illinois resident worker injured on the job in Wisconsin recovered workers' compensation payments under the Illinois law. Like the Florida law, the Illinois law contained typical exclusive remedy provisions.[19] Thereafter, the worker sought recovery under the Wisconsin workers' compensation law. This Court, in the absence of "unmistakable language" to the contrary, *id.* at 627-28, construed the Illinois exclusivity provisions so as to bar only other actions by the worker under the common law or statutes *of Illinois* and upheld the federal Constitutional power of Wisconsin to make a supplemental award. *Id.* at 630. The Court announced that its holding was made "in light of the rule that workmen's compensation laws are to be liberally construed in furtherance of the purpose for which they were enacted [and] *we should not readily interpret such [an exclusive remedy] statute so as to cut off an employee's right to sue under other legislation passed for his benefit.*" *Id.* at 628 (emphasis supplied).

In *Thomas*, 448 U.S. 261 (1980), a District of Columbia resident injured on the job in Virginia recovered under the workers' compensation laws of Virginia. Thereafter, the worker sought additional compensation under a District of Columbia law which made available the procedures and payments of the federal Longshore and Harbor Workers' Compensation Act. Virginia law precluded any recovery additional to Virginia workers' compensation "at common law or otherwise." The employer pleaded the Virginia law as a defense to the District of Columbia action and urged that the District of Columbia was required to

[19] *See Id.* at 627 ("No common law or statutory right to recover damages for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, shall be available to any employee who is covered by the provisions of this act . . . .").

give full faith and credit to the prior Virginia proceeding and the exclusivity provisions of the Virginia law.

This Court upheld the worker's right to recover supplemental benefits under the federal law and, more generally, eased the burdens on injured workers seeking recoveries from more than one jurisdiction. The Court, under the approach of at least the plurality, ruled that state exclusivity provisions, however drafted, must be limited in effect only to the state of enactment for "a State has no legitimate interest within the context of our federal system in preventing another State from granting a supplemental compensation award . . . ." 448 U.S. at 286.[20]

Entirely consonant with *Thomas*, the Florida statute on its face reflects no Florida interest in denying a worker who is entitled to benefits under the Florida workers' compensation law such supplemental remedies as he might claim from another political entity. The statute limits only what the worker can recover from the *Florida* plan; not what he can recover under an alternate plan.[21]

[20] According to *Thomas*, even if the "unmistakable language" test of *McCartin* survives, only the exclusivity provisions of the Nevada workers' compensation law meet that test. *See id.* at 275 n.21. And even that exclusivity provision speaks only to recoveries "under the laws of any other *state*." Nev. Rev. Stat. § 616.525 (1979) (emphasis supplied). The Nevada statute makes no effort to deny injured workers supplemental benefits under the laws of the federal government.

[21] This matter is addressed by Fla. Stat. Ann. § 440.09(1) (West 1981), which provides in pertinent part:

> When an accident happens while the employee is employed elsewhere than in this state, which would entitle him or his dependents to compensation if it had happened in this state, the employee or his dependents shall be entitled to compensation if the contract of employment was made in this state, or the employment was principally localized in this state. However, if an employee shall receive compensation or damages under the laws of any other state, nothing herein contained shall be construed so as to permit a total com-

The Florida Supreme Court has acknowledged that under the Florida workers' compensation law, an employee was "permitted to seek recovery in more than one state . . . ." *DeCancino* v. *Eastern Air Lines*, 239 So. 2d 15, 17 (Fla. 1970).[22]

It is of course only fortuitous that the respondents brought their claims for relief under AWPA in a federal court located in the same state from which they had received workers' compensation benefits. If, as the Florida statute, the Florida Supreme Court, and *Thomas* make clear, the respondents could recover supplemental payments under, say, Alabama law in a state court in Alabama, it follows as an *a fortiori* matter that respondents can recover supplemental payments under federal law in a federal court—wherever located. That the federal court is in Florida can have no bearing on the outcome of this dispute.

B. Florida's Exclusivity Provision, Even Where Clearly Applicable, Does Not Bar Actions When the Challenged Conduct Violates Important Federal Policies

Even where a Florida employee seeks a tort recovery for workplace injuries under *Florida* law against a Florida employer—quintessentially at the heart of the exclusivity provision—the Florida Supreme Court has narrowly construed the exclusivity provision so as to allow recovery, where the tortious conduct contravenes important federal policies for the protection of employees in the workplace.

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pensation for the same injury greater than is provided herein.

[22] *See also Follese* v. *Eastern Air Lines*, 271 N.W.2d 824 (Minn. 1978), where an injured worker with contacts both in Florida and Minnesota, but whose workers' compensation claim was barred in Florida by the Florida statute of limitation, was allowed recovery under the Minnesota law, notwithstanding the exclusive remedy provisions of the Florida workers' compensation statute.

Thus, in *Byrd* v. *Richardson-Greenshields Securities, Inc.*, 14 Fla. L. Weekly 549 (Fla. Sup. Ct. Oct. 26, 1989), female employees who were sexually harassed in the workplace sued their employer and sought tort recovery under Florida common law for the infliction of emotional distress. The employer claimed the action was barred by the exclusivity provision of the Florida workers' compensation law. The Florida Supreme Court sustained the employees' right to proceed notwithstanding the exclusivity provision. According to the court, "the present case strongly implicates . . . sexual harassment policies [of federal and state law] and, accordingly, may not be decided by a blind adherence to the exclusivity rule of the workers' compensation statute alone." *Id.* at 550. Using *federal* enactments as its "primary source," and with due regard for the Supremacy Clause, the court found "overwhelming public policy" against sexual harassment, and held that "[a]pplying the exclusivity rule of workers' compensation to preclude any and all tort liability effectively would abrogate this policy . . . and flout Title VII of the Civil Rights Act of 1964." *Id.* at 551.

Thus, this Court's decisions in *Thomas* and *McCartin* along with the Florida Supreme Court's construction of the Florida law require a determination here that notwithstanding respondents' limited recovery of state workers' compensation benefits, they are fully entitled to pursue a supplemental federal court recovery under AWPA.[23] The Florida statute limits a worker's right to a supplemental remedy from his employer, but only if such supplemental

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[23] *See Landry* v. *Carlson Mooring Service*, 643 F.2d 1080, 1085 (5th Cir. 1981) (full faith and credit obligation of federal court under 28 U.S.C. § 1738 toward injured worker's compensation recovery under Texas law no bar to worker's recovery of supplemental benefits under federal Longshore and Harbor Workers' Compensation Act, because "a subsequent recovery under the workers' compensation act of another jurisdiction is proper"). *See also Sun Ship, Inc.* v. *Pennsylvania*, 447 U.S. 715 (1980).

remedy is predicated on *Florida* law. Here, respondents seek a remedy predicated on *federal* law. Further, the Florida exclusive remedy provisions allow a worker to obtain a tort recovery even under *Florida* law where the tortious conduct violates important worker protection policies expressed in federal law. Here the tortious conduct alleged violates just such a federal law. The Florida law is thus not a bar to recovery under AWPA.

III. RESPONDENTS ARE ENTITLED TO REMEDIES UNDER BOTH THE STATE AND FEDERAL REGIMES. IN THE EVENT THE COURT CONSTRUES THE STATE LAW TO APPLY HERE, THE STATE EXCLUSIVE REMEDY PROVISION CLASHES WITH AWPA AND MUST BE PREEMPTED

The test for federal preemption is well established: "In this as in other fields, the question of whether federal law preempts state law 'involves a consideration of whether that law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' " *Aronson* v. *Quick Point Pencil Co.*, 440 U.S. 257, 262 (1979) (quoting *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941)). *See also Bonito Boats, Inc.* v. *Thundercraft Boats, Inc.*, 109 S. Ct. 971 (1989) (Florida law preempted). Under the Supremacy Clause of the Constitution, no state may enact laws that "give protection of a kind that clashes with the objectives of the federal . . . laws." *Sears, Roebuck & Co.*, v. *Stiffel Co.*, 376 U.S. 225, 231 (1964). Thus, if this Court were to determine that the Florida workers' compensation law bars remedies under the laws of other jurisdictions, those state restrictions would give protection to agricultural employers from federal remedies for violations of AWPA. That would be a head-on clash between the state law and the purposes and objectives of AWPA and preemption would be required.

But the exclusivity provisions of the Florida statute do not limit an injured worker's right to obtain supplemental

payments under a statute of a jurisdiction other than Florida. Further, as noted in section I of this brief, Congress clearly did not intend to subordinate farm worker rights under AWPA to the limited benefits available under state workers' compensation acts. Thus, under the construction of the state and federal statutes presented here, farm workers may exercise rights under *both* statutes and the Florida law does not block the accomplishment of Congress' purposes in AWPA. In these circumstances, there is no question of federal preemption.

In the event, however, the Court determines that the exclusive remedy provision of the Florida law does apply to the facts presented here, then it must be noted that the Court has already indicated the appropriateness of preempting that provision. Thus, in *Sun Ship, Inc.*, v. *Pennsylvania*, 447 U.S. 715 (1980), workers injured in connection with certain ship building and repair enterprises in maritime commerce who were eligible for benefits under the federal Longshore and Harbor Workers' Compensation Act first sought benefits under the Pennsylvania workers' compensation law. The question presented to this Court was whether a state was authorized to make payments to workers under a state compensation scheme for injuries that fell within the coverage of the federal act. This Court determined that the remedial provisions of *both* state and federal statutes could stand together. Further, on the basis of *Calbeck* v. *Travelers Insurance Co.*, 370 U.S. 114, 131-32 (1962), the Court ruled that the employees' acceptance of payments under the state law did not constitute an election of remedies precluding recovery under the federal act. 447 U.S. at 723-24.

In light of this ruling, it was unnecessary for the Court to reach any preemption issue. Nevertheless, the Court described preemption as the proper procedure should a case arise where the exclusive remedy provisions of a state workers' compensation law are applied so as to frustrate

workers' claims for relief under a federal statute. According to the Court:

> Most often, state workmen's compensation laws will not be treated as making awards thereunder final or conclusive. *See Calbeck* v. *Travelers Insurance, Co., supra*, [370 U.S.] at 131-132; *Industrial Comm'n* v. *McCartin, supra* [330 U.S. 622] . . . . Admittedly, if a particular state compensation law provision does indisputably declare its awards final, a conflict with the LHWCA may possibly arise where a claimant seeks inferior state benefits in the first instance . . . . [A]lthough the question is not directly before us, we observe that if federal preclusion ever need be implied to cope with this remote contingency, a *less disruptive approach would be to pre-empt the state compensation exclusivity clause* rather than to preempt the entire state compensation statute as appellant suggests.

447 U.S. at 724 n.6 (emphasis supplied).

IV. THE FOURTH CIRCUIT'S DECISION IN *ROMAN* v. *SUNNY SLOPE FARMS, INC.* WAS WRONG IN FAILING TO FOLLOW THE RULE THAT STATE LAW IMMUNITY ONLY OPERATES IN THE SPHERE OF STATE LAW CLAIMS

In *Roman* v. *Sunny Slope Farms, Inc.*, 817 F.2d 1116 (4th Cir. 1987), the Fourth Circuit denied an injured farm worker the federal remedies Congress expressly created for his protection in AWPA solely because the worker had accepted limited benefits under South Carolina's workers' compensation law. The *Roman* court principally relied on two cases, *United States* v. *Demko*, 385 U.S. 149 (1966) and *Garvin* v. *Alumax of South Carolina*, 787 F.2d 910 (4th Cir. 1984). Neither case supports the court's decision.

In *Demko*, a federal prisoner injured in a federal penitentiary recovered under 18 U.S.C. § 4126, a federal compensation act wherein Congress provided for federal "compensation to inmates . . . for injuries suffered . . . in any work activity in connection with the maintenance or operation of the institution where confined." The prisoner then sought additional recovery from the United States under the Federal Tort Claims Act, 28 U.S.C. § 1346(b). This Court ruled that 18 U.S.C. § 4126 represented the prisoner's exclusive remedy, because compensation laws enacted by Congress for the benefit of a particular group of workers are generally thought of as a substitute for common law tort actions against the federal government, 385 U.S. at 151-52, and it would be anomalous to infer a congressional purpose to allow the Federal Tort Claims Act to give greater protection to "injured prisoners [than to] all other government employees who are protected exclusively by the Federal Employees' Compensation Act . . . ." *Id.* at 152.[24]

Demko was strictly a conflict between two federal laws reflecting the conflicting expressions of a single legislature. Unlike the instant case, *Demko* presented no conflict between a federal law and the law of a *state*.[25] As the Elev-

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[24] The Court relied on *Johansen* v. *United States*, 343 U.S. 427 (1952) and *Patterson* v. *United States*, 359 U.S. 495 (1959), both requiring the harmonization of two *federal* statutes of equal dignity, one designed specifically to compensate injured crew members on government vessels and one designed generally as a waiver of the government's sovereign immunity. In each case, the Court ruled that the *specific federal* compensation statute provide the worker's exclusive remedy against the United States. According to the Court, there was no evidence that Congress, merely by "put[ting] aside its sovereign armor" in the general statute for certain damage suits, intended to confer substantive rights on claimants additional to those offered "all other Government employees on the same vessel" as provided for in the specific compensation statute. *Johansen*, 343 U.S. at 431 and *Patterson*, 359 U.S. at 496.

[25] Prisoners have traditionally been denied state workers' compensation remedies for injuries sustained in connection with work done in prison. *See* 1c A. Larson, *supra*, note 7 at § 47.31.

enth Circuit ruled in the instant case, *Demko* does not support the argument that a class of workers whose particular workplace problems Congress has acknowledged and sought to remedy in a *federal* scheme, should be limited to the less adequate protections of the laws of the *states*. The congressional legislative record in AWPA clearly reflects that farm workers are yet another group of workers for whom Congress deemed state remedies to be inadequate and for whom Congress created a special federal system of recovery for work-related injuries.

Thus, *Demko* might support a holding that AWPA provides the *exclusive federal* remedy for farm workers. But by no stretch can *Demko* support a holding that AWPA provides *no* federal remedy for farm workers.[26]

The *Roman* court's additional reliance on *Garvin* v. *Alumax of South Carolina, Inc.*, 787 F.2d 910 (4th Cir. 1984) is also misplaced. In *Garvin*, an injured dock worker collected compensation under the federal Longshore and Harbor Workers' Compensation Act. He then sought a tort recovery grounded solely upon state common law negligence against his remote employer, Alumax. For an employee who accepted *state* workers' compensation benefits, the state law "exclude[d] all other rights and remedies" against a remote employer. Relying on *Ferri* v. *Ackerman*, 444 U.S. 193, 198 (1979) ("when state law creates a cause of action, the state is free to define defenses to the claim, including the defense of immunity"), the *Garvin* court upheld Alumax's defense of immunity to the *state* tort suit

[26] The federal law/federal law conflict of *Demko* might arise if, for example, migrant farm workers injured while working in the District of Columbia received compensation benefits under the federal Longshore and Harbor Workers' Compensation Act (the workers' compensation statute for the District of Columbia) and thereafter sought supplemental benefits via a private suit under AWPA. There, in contrast to the instant case, the conflict would be between the exclusive remedy provisions of a *federal* statute (LHWCA) and the particularized farm worker remedies of another *federal* statute (AWPA).

based on the *state* statute. The court deemed it irrelevant to the availability of *state* law immunity to the *state* law claim that had the worker been able to plead a federal cause of action in tort (he could not), Alumax would have had no federal law immunity to such federal lawsuit. According to the *Garvin* court, upholding state law immunity from state tort suits for a remote employer did not frustrate the achievement of the goals of the federal compensation statute, which provided no such immunity, because there was no evidence that Congress meant to create a federal cause of action against remote employers; there was no evidence that Congress meant to deny immunity to a remote employer in *state* cases; and because *state* law immunity would have no application to the assertion of a federal cause of action against the remote employer.

Garvin does not support the result in *Roman* sustaining a *state* law defense to defeat a *federal* law claim. *Garvin* correctly holds—as respondent asserts here—that a state law immunity defense is operative only "in its own sphere." *Id.* at 917.[27]

[27] *See also Hahn* v. *Ross Island Sand & Gravel Co.*, 358 U.S. 272 (1959) (federal immunity for employer under federal Longshore and Harbor Workers' Compensation Act did not bar employee from maintaining tort suit under state common law against employer who was not immune under the state workers' compensation laws).

CONCLUSION

For the reasons stated, amici respectfully request the Court to affirm the decision of the Eleventh Circuit below.

Respectfully submitted,

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